

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN L. THOMPSON,
Plaintiff,

v.

MASON COUNTY DISTRICT COURT,
Defendant.

Case No. C07-5512RBL
ORDER.

This matter comes before the Court on plaintiff's motion to proceed in forma pauperis [Dkt. #2] under 28 U.S.C. § 1915. This is plaintiff's second attempt to challenge his DUI conviction in Mason County Superior Court. A review of the record demonstrates plaintiff's lawsuit is frivolous and is **DISMISSED** with prejudice.

The Court shall dismiss a plaintiff's lawsuit if the Court determines it is frivolous, *see* 28 U.S.C. §1915. This lawsuit is frivolous and is dismissed on procedural grounds as well as on the merits.

First, plaintiff's motion shall be dismissed on procedural grounds. This lawsuit is plaintiff's second challenge to his DUI conviction in Mason County District Court. This lawsuit, like plaintiff's first lawsuit (C06-5179) is barred by *Heck v. Humphrey*, which holds a plaintiff challenging their conviction, "has no cause of action under § 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Plaintiff's DUI conviction from Mason County has not been reversed, expunged, invalidated, or impugned by a writ of habeas corpus. Like plaintiff's first lawsuit this lawsuit is barred by 28 U.S.C. § 1915 and therefore is dismissed as frivolous.

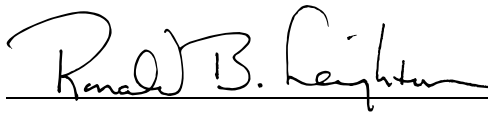
Secondly, plaintiff's lawsuit shall also be dismissed on the merits. This complaint is barred by the

1 doctrine of res judicata. There are three elements necessary to trigger claim preclusion by res judicata: a
2 judgment on the merits in a prior suit resolving claims by the same parties, or their privies, and a subsequent
3 suit based on the same cause of action. *See Montana v. United States*, 440 U.S. 147, 153 (1979). All three
4 elements are present here. This Court has rendered a judgment on the merits of plaintiff's previous lawsuit
5 (C06-5179), the claim is by the same party, and is based on the circumstances surrounding plaintiff's previous
6 challenge (C06-5179) to his DUI conviction in Mason County District Court. Therefore, plaintiff's claim is
7 barred by the doctrine of res judicata.

8 For the above reasons plaintiff's lawsuit is **DISMISSED** with prejudice.

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10 **IT IS SO ORDERED.**

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12 Dated this 1st day of November, 2007.

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16 RONALD B. LEIGHTON
17 UNITED STATES DISTRICT JUDGE
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